



Case Alert

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Second Circuit Relies on *Capstone's* Subjectivity Standard in Upholding Coverage for Priest Sexual Abuse Settlement

In *Hartford Roman Catholic Diocesan Corp. v. Interstate Fire & Casualty Co.*, Docket No. 16-2999-cv, 17-2484-cv (2d Cir. 2018), the United States Court of Appeals for the Second Circuit affirmed the trial court's decision that the assault and battery exclusion in an excess liability policy did not exclude coverage for claims made against the Archdiocese for sexual abuse, and that such claims qualified as an "occurrence" under the policy. In doing so, the court relied on the subjectivity standard for intentional acts set by the Connecticut Supreme Court in *Capstone Building Corp. v. American Motorists Insurance Co.*, 208 Conn. 760 (2013). [Click here](#) for the article.

The case involves liability insurance coverage for claims against the Hartford Roman Catholic Diocesan Corp. (the "Archdiocese") alleging that priests sexually assaulted several boys in the 1970s and 1980s. Interstate Fire & Casualty Co. ("Interstate") issued the Archdiocese a second layer excess liability policy (the "Policy"). Interstate denied coverage on the basis that the assaults were not "occurrences" because they were not "fortuitous", and were excluded based on the assault and battery exclusion (the "Exclusion").

The Court of Appeals affirmed the lower court ruling that the assaults were occurrences under the Policy, and that they did not fall within the assault and battery exclusion. On the first issue, the court relied on the reasoning in *Capstone* which held "an accident is an event that is unintended from the perspective of the insured." In other words, it did not matter whether the Archdiocese should have known that a priest who had previously molested a boy would do so again when placed in another school, only that given the information the Archdiocese had at the time, they did not know that he would. The district court determined that the Archdiocese reasonably relied on a doctor's assessment that the priest in question would not return to sexual abuse of minors so long as he remained sober.

On the second issue, the Court of Appeals affirmed the district court's ruling that the assault and battery exclusion, which applied to "liability of any 'Assured' for assault and battery committed by or at the direction of such 'Assured' ...," did not bar coverage for the claims against the Archdiocese. The term "Assured" includes the Archdiocese and "any official, trustee or employee of [the Archdiocese] while acting within the scope of his duties as such"

Interstate argued that the phrase "such Assured" refers back to the phrase "any assured" and thereby eliminates coverage for all Assureds (i.e. the priests, and the Archdiocese). The Archdiocese argued that the priests were not acting within the scope of their duties when they allegedly committed the assaults, and that the wording of the exclusion bars coverage only to those Assureds who committed or directed the assault, not the Archdiocese. The Court of Appeals agreed with the Archdiocese's interpretation, relying on the usage of the different terms "any Assured" and "such Assured" in the exclusion, and on definition of the word "such" as having a limiting factor. The phrase "such Assured" referred only to the assailant Assureds. The court also noted that it was doubtful whether the assailant priests were Assureds at all since they were arguably acting outside the scope of their priestly duties when they allegedly sexual abused the victims.

The Court of Appeals also affirmed the lower ruling that that even though coverage is owed under the policy, the insurer did not violate the Connecticut Unfair Insurance Practices Act ("CUIPA") when it denied coverage to the Archdiocese.

This decision builds on Connecticut jurisprudence in favor of a subjective test for intentional acts. As in *Capstone*, the court recognized that intentionality is specific to the insured, and should not be second-guessed by a court. These decisions have allowed insureds to receive the benefit of the insurance coverage they paid for and expected, when an unforeseen event occurs.

You can read the full decision [here](#).

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